

Implementing Living Law under Article 2 of the Indonesian Criminal Code : The Maya Indigenous Community in Raja Ampat

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KEYWORDS	ABSTRACT
Keywords: Living Law; Indigenous Communities; Legal Pluralism; Criminal Justice System; Integrated Living Law Justice Model. Conflict of Interest Statement: The authors declare that there are no financial or personal conflicts of interest that influenced the objectivity in preparing this article. Copyright © 2026 Vifada Assumption Journal of Law. All rights reserved.	Purpose: This study examines the implementation of Article 2 of Law Number 1 of 2023 concerning the Indonesian Criminal Code in resolving disputes within the Maya Indigenous Community in Raja Ampat and evaluates whether the normative recognition of living law has been actualized in criminal justice practice. Research Design and Methodology: This study uses a socio-legal approach combining normative legal analysis and empirical field research. Primary data were obtained through semi-structured interviews with the Chair of the Ambel Waigeo Indigenous Community Institution and field observations in Raja Ampat. Secondary data were drawn from statutory regulations, legal literature, journal articles, and previous studies. Findings and Discussion: The findings show that customary deliberation, genealogical verification, and customary oaths remain socially legitimate mechanisms for resolving customary disputes. However, Article 2 has not yet created an institutional mechanism connecting customary settlement with investigation, prosecution, and court proceedings. This creates a Normative Recognition Empirical Actualization Gap. The model offers a conceptual bridge for institutional implementation. Implications: The study recommends implementing regulations on institutional coordination, procedural standards, recognition of customary law, and constitutional safeguards based on human rights, Pancasila, the 1945 Constitution, legality, and legal certainty. Future comparative socio-legal research is needed to test the Integrated Living Law Justice Model.

Introduction

Developments in modern criminal law reveal a paradigm shift from a legal system oriented toward legal centralism toward the recognition of legal pluralism as a reality that cannot be ignored in a multicultural nation.¹ For more than a century, criminal law has been regarded as a state instrument entirely shaped by legislation, such that the applicability of a criminal provision is determined solely by the legislative authority.^{2,3} This paradigm developed alongside the dominance of legal positivism, which views written law as the sole source of law with binding force. Consequently, the various norms upheld and practiced by indigenous communities are often treated merely as social facts that hold no relevance within the national criminal justice system. In reality, however, many indigenous

¹ Rizka Fakhrurozi And Erwin Syahrudin, "Hukum Adat Dalam Perkembangan: Paradigma Sentralisme Hukum Dan Paradigma Pluralisme Hukum," *The Juris* 6, No. 2 (December 2022): 472-84, <https://doi.org/10.56301/Juris.V6i2.620>.

² Mahrus Ali, *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2022).

³ Henny Saida Flora and Pramidazzura Alifa Rifqi, "Governing through Penal Policy: Criminal Law and State Control Mechanisms," *Journal of Strafverordening Indonesian* 2, no. 6 (January 29, 2026): 52-61, <https://doi.org/10.62872/k0n6rc71>.

communities in various countries continue to maintain effective conflict resolution mechanisms without relying entirely on the state judicial system.⁴

These developments have led to the emergence of the concept of legal pluralism, which is the view that more than one legal system, each with its own social legitimacy, can coexist within a single nation-state. From this perspective, state law is not the sole mechanism governing society, but rather coexists alongside customary law, religious law, and other social norms.⁵ Through his theory of “Living Law,” Eugen Ehrlich asserts that the true essence of law (the center of gravity of legal development) does not always lie in statutory law, but rather grows and evolves within society.⁶ To assess the effectiveness of a legal system, it is not enough to measure it solely by its normative certainty; rather, it must also be evaluated based on its ability to accommodate social values that have gained legitimacy through the practices of society.⁷

From a criminal law perspective, recognition of “living law” is becoming increasingly important because the objectives of modern criminal punishment are no longer limited to retribution against offenders, but are also aimed at restoring social balance, protecting victims, and maintaining social harmony. This shift in orientation is evident in the development of the concept of restorative justice, which views conflict resolution as a process of restoring social relationships rather than merely imposing criminal penalties.⁸ In many indigenous communities, these principles have in fact long been put into practice through customary deliberation, peace-making, the payment of customary compensation, and community-based reconciliation mechanisms. This situation demonstrates that customary law is not merely a cultural heritage, but also embodies values that are relevant to the development of contemporary criminal law theory.⁹

Modern criminal law increasingly reflects a shift from legal centralism toward legal pluralism, particularly in societies where state law coexists with customary norms that continue to regulate social relations. In Indonesia, this shift is significant because many Indigenous communities still maintain dispute resolution mechanisms based on deliberation, customary authority, social balance, and communal legitimacy.¹⁰ The recognition of living law under Article 2 of Law Number 1 of 2023 concerning the Indonesian Criminal Code therefore marks an important development in Indonesian criminal law reform. However, the central issue is no longer whether living law is normatively recognized, but how such recognition can be implemented within the national criminal justice system without undermining legality, legal certainty, human rights, and constitutional principles. This framing places Article 2 not merely as a statutory reform, but as an implementation issue that requires a connection between legal pluralism, customary dispute resolution, and the operational structure of the national criminal justice system.

A major transformation in Indonesia’s criminal justice system occurred with the enactment of Law No. 1 of 2023 on the Criminal Code, which replaced the *Wetboek van Strafrecht* as a colonial legal instrument. The establishment of the National Criminal Code is not merely a codification update, but rather part of a national legal policy aimed at creating a criminal justice system more in line with the character of the Indonesian people. One of the most fundamental reforms is the recognition of “living law” as stipulated in Article 2. This provision marks a paradigm shift in Indonesia’s criminal law from a system entirely oriented toward formal legality toward one that begins to make room for legal norms that have evolved within indigenous communities.

⁴ Zainal Arifin Hoesein M. Saleh, “Relevansi Aliran Positivisme Hukum Dalam Sistem Hukum Indonesia,” *Journal of Innovative and Creativity* 5, no. 3 (2025): 31473-88.

⁵ Sidik Sunaryo M Iqbal Ramadhan Silehu, “Pluralisme Hukum Dan Keadilan : Studi Konflik Kepentingan Nasional Dan Pemenuhan Hak Masyarakat Adat,” *Risalah Hukum* 21, no. 2 (2025): 116-34, <https://doi.org/https://doi.org/10.30872/risalah.v22i1>.

⁶ Sapto Hermawan et al., “Constitutionality of Indigenous Law Communities in the Perspective of Sociological Jurisprudence Theory,” *Jurnal Jurisprudence* 11, no. 2 (March 28, 2022): 282-96, <https://doi.org/10.23917/jurisprudence.v11i2.12998>.

⁷ Tegar Saputra, “Relevansi Teori Living Law Eugen Ehrlich Dalam Membangun Legitimasi Sosial Hukum Formal Di Indonesia,” *Journal of Education and Multidisciplinary Studies* 1, no. 2 (2026): 204-18.

⁸ Netty Mewahaty Simbolon, “Pergeseran Paradigma Pemidanaan Dalam KUHP Nasional: Systematic Literature Review Terhadap Keadilan Restoratif Dalam Hukum Pidana Indonesia,” *Pagaruyuan Law Journal* 10, no. 1 (2026): 270-82.

⁹ Claudia Yuni Pramita Heskia Ibrani Mamahit, Tahasak Sahay, “Implementasi Nilai Keadilan Restoratif Dalam Hukum Adat Indonesia,” *Al-Zayn: Jurnal Ilmu Sosial & Politik* 4, no. 2 (2026): 6033-44, <https://doi.org/https://doi.org/10.61104/alz.v4i2.5061>.

¹⁰ Didik Sukriono et al., “Local Wisdom as Legal Dispute Settlement: How Indonesia’s Communities Acknowledge Alternative Dispute Resolution?,” *Legality: Jurnal Ilmiah Hukum* 33, no. 1 (April 15, 2025): 261-85, <https://doi.org/10.22219/ljih.v33i1.39958>.

Normative recognition of living law does not automatically resolve the various implementation issues that arise in practice. Article 2 of Law No. 1 of 2023 does indeed provide a legal basis for the validity of living law within society, but it has not yet established operational parameters regarding how a customary norm can be classified as living law, who has the authority to establish it, what the mechanism for proving it is in criminal proceedings, or how decisions by customary institutions relate to those of state courts. This regulatory gap has the potential to create legal uncertainty while also opening the door to differing interpretations among law enforcement officials. Thus, the main challenge following the enactment of the National Criminal Code no longer lies in the recognition of “living law,” but rather in how that recognition is effectively implemented within Indonesia’s criminal justice system.

This issue is clearly evident among the indigenous Maya people in Raja Ampat Regency. The Maya Indigenous Community provides a concrete socio-legal setting for examining how living law continues to operate through customary authority, genealogical tracing, customary deliberation, and customary oaths, even before such practices are formally connected to state criminal justice procedures. Based on the results of field research, the Maya community still relies on customary law as the primary mechanism for resolving disputes over communal lands through customary deliberation, genealogical tracing, and evidence based on the collective knowledge of customary elders. The state litigation process is only pursued when a dispute escalates into a conflict resulting in serious criminal offenses or when customary mechanisms are no longer capable of restoring social balance. These findings indicate that customary law still holds very strong legitimacy as a “living law” in community life, even though its existence has not yet been fully integrated into the national criminal justice system. This is reinforced by interview results showing that the resolution of customary land disputes is based on customary deliberation, genealogical tracing, and customary oath mechanisms,¹¹ Meanwhile, litigation is used as a last resort when conflicts can no longer be resolved through customary mechanisms.

The Maya Indigenous Community was selected as the object of this study because it provides a concrete socio-legal context for examining the implementation of Article 2 of the Indonesian Criminal Code. The community continues to maintain customary institutions, genealogical evidentiary mechanisms, customary deliberation, and customary oaths in resolving disputes, particularly those concerning communal land and clan relations. This makes the Maya Indigenous Community relevant for assessing whether the normative recognition of living law has been actualized in practice or remains separated from formal criminal justice mechanisms. Therefore, Raja Ampat is not merely treated as a research location, but as an empirical site for analyzing the tension between statutory recognition and the social operation of customary law.

Previous studies on Article 2 of Law Number 1 of 2023 have largely focused on normative debates concerning legal pluralism, the expansion of the principle of legality, and the constitutional position of customary law within the Indonesian criminal law system. Other studies have examined customary dispute resolution from the perspective of agrarian law or customary law, but they have not sufficiently connected these practices to the implementation of the new Indonesian Criminal Code.¹² This article positions itself within that gap by examining how the statutory recognition of living law is empirically actualized in the dispute resolution practices of the Maya Indigenous Community in Raja Ampat. Thus, the article does not treat Article 2 only as a normative provision, but examines whether its recognition of living law has been institutionally actualized in a specific Indigenous community. The novelty of this study lies in identifying the Normative Recognition Empirical Actualization Gap, namely the gap between the formal recognition of living law under Article 2 and the absence of operational mechanisms linking customary dispute resolution with investigation, prosecution, and court proceedings. This novelty is strengthened by the proposal of the Integrated Living Law Justice Model, which is intended to explain how customary institutions, law enforcement officials, constitutional safeguards, and customary dispute resolution outcomes may be linked within one accountable framework.

¹¹ Interview with Yohanis Tebu, Head of the Maya Indigenous Community, Raja Ampat Regency, 17 June 2026, 5:30 p.m. WITA.

¹² Ayu Meiranda et al., “Upaya Hukum Terhadap Penyelesaian Sengketa Tanah Ulayat Di Kabupaten Kampar Guna Menjaga Keamanan Nasional,” *Jurnal Analisis Hukum* 6, no. 1 (April 2023): 99-114, <https://doi.org/10.38043/jah.v6i1.4232>.

Based on these circumstances, this study is built on the hypothesis that the recognition of “living law” in Article 2 of Law No. 1 of 2023 remains normative in nature and has not yet been fully supported by implementing instruments capable of integrating indigenous peoples’ dispute resolution mechanisms into the national criminal justice system. As a result, customary law remains the primary mechanism for maintaining social order within indigenous communities, while the state’s criminal justice system only intervenes when disputes escalate into criminal offenses that disrupt public order. Based on this hypothesis, this study aims to analyze the implementation of Article 2 of Law No. 1 of 2023 in the resolution of disputes among the Maya indigenous community in Raja Ampat Regency and to formulate a conceptual model for the integration of “living law” and the national criminal justice system that can provide legal certainty while respecting the existence of indigenous legal communities.

Accordingly, this study contributes to criminal law scholarship by offering a socio-legal reading of Article 2 that does not stop at normative recognition but proceeds to the problem of institutional implementation. It also contributes to legal policy by proposing the Integrated Living Law Justice Model as a conceptual framework for coordinating customary institutions, law enforcement officials, constitutional safeguards, and the recognition of customary dispute resolution outcomes. Through this framework, the article seeks to clarify how living law can be integrated into the national criminal justice system in a manner that remains consistent with legality, human rights, legal certainty, and the constitutional recognition of Indigenous communities. Accordingly, the Introduction has been strengthened to show that the article moves from the theoretical debate on legal pluralism to the practical problem of implementing Article 2 in the Maya Indigenous Community.

Literature Review

Living Law Theory and the Sociological Foundation of Customary Law

The theory of living law provides the main conceptual foundation for understanding the relationship between law, society, and customary norms.¹³ Eugen Ehrlich argues that the center of gravity of legal development does not always lie in legislation, but in the social life of the community.¹⁴ From this perspective, law is not limited to written rules enacted by the state. Law also includes norms that are obeyed, practiced, and socially legitimized by members of a community.

In the context of Indigenous communities, living law is reflected in norms that regulate social relations, dispute resolution, leadership authority, sanctions, and collective responsibility.¹⁵ These norms may not always be codified in statutory law, but they are recognized and enforced through social acceptance. The legitimacy of living law therefore depends on its actual operation in society. This makes empirical observation important in determining whether a norm truly functions as law in social practice.

Living law theory is relevant to the implementation of Article 2 of Law Number 1 of 2023 concerning the Indonesian Criminal Code because this provision recognizes the existence of law living in society. However, statutory recognition alone does not automatically transform customary law into an operational part of the criminal justice system. The recognition must be examined through the way customary norms are identified, proven, applied, and connected with law enforcement institutions. This is the point at which living law theory becomes an analytical tool for evaluating the gap between law in the books and law in action.

For the Maya Indigenous Community in Raja Ampat, living law can be seen in the continued use of customary deliberation, genealogical verification, and customary oaths in resolving disputes. These mechanisms show that customary law is not merely a cultural practice, but a normative order that

¹³ Zulkham Sadat Zuwanda and Sopian Sopian, “Study of Living Law and Its Implication in the Formation of the Criminal Code (KUHP) in the Era of Decentralization of Indonesian Laws,” *West Science Law and Human Rights* 2, no. 04 (October 31, 2024): 389-96, <https://doi.org/10.58812/wslhr.v2i04.1363>.

¹⁴ Dian Mustika and Wenny Dastina, “Religious, Economic, and Political Shifting in Inheritance System of Suku Anak Dalam,” *AHKAM: Jurnal Ilmu Syariah* 20, no. 1 (June 30, 2020), <https://doi.org/10.15408/ajis.v20i1.13568>.

¹⁵ Erlina, . Syafrinaldi, and Lina Jamilah, “Living Law in Society as a Legal Consideration in the Settlement of Disputes Between Customary Legal Communities in Indonesia,” *International Journal of Research and Review*, November 26, 2025, 396, <https://doi.org/10.52403/ijrr.20251142>.

continues to guide community behavior. The Maya community's reliance on customary institutions also demonstrates that legal legitimacy may arise from communal trust rather than state command alone.¹⁶ Therefore, living law theory helps explain why customary law remains authoritative even when its position within formal criminal procedure remains unclear. This theoretical foundation becomes the starting point for discussing legal pluralism because the continued authority of living law cannot be separated from the coexistence of customary law and state law within the same social space. In other words, the recognition of living law under Article 2 must be examined not only as a sociological fact, but also as part of a broader plural legal order in Indonesia.

After establishing that living law derives its legitimacy from social practice, the next issue is how such living law interacts with state law. This interaction is best explained through legal pluralism and the transformation of the principle of legality in the new Indonesian Criminal Code.

Legal Pluralism and the Principle of Legality in the New Indonesian Criminal Code

Legal pluralism explains a social condition in which more than one legal order exists within the same legal and social space. John Griffiths views legal pluralism as a condition where state law is not the only normative system that regulates society.¹⁷ In plural societies, customary law, religious norms, local institutions, and state law may operate simultaneously. This concept is important for Indonesia because Indigenous communities continue to maintain their own legal institutions and dispute resolution mechanisms.

The enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code reflects an important shift in Indonesian criminal law. The previous criminal law tradition was largely influenced by formal legality, which emphasized written criminal provisions as the basis for punishment. Article 2 introduces a broader understanding by recognizing living law as part of the criminal law framework, provided that it does not conflict with Pancasila, the 1945 Constitution, human rights, and general principles of law recognized by civilized nations.¹⁸ This provision shows that the principle of legality is no longer understood solely in a formal textual sense.

However, the expansion of legality through Article 2 also raises theoretical and practical problems. On one hand, it acknowledges Indonesia's plural legal reality and gives normative space to customary law. On the other hand, it may create uncertainty if the criteria, evidentiary standards, institutional authority, and procedural limits of living law are not clearly regulated.¹⁹ Therefore, legal pluralism must be balanced with legal certainty, constitutional safeguards, and protection of individual rights.

In this article, legal pluralism is used to explain the coexistence of Maya customary law and the national criminal justice system. The Maya Indigenous Community continues to rely on customary law to resolve land, clan, and resource related disputes. At the same time, state criminal law remains relevant when disputes escalate into serious criminal offences or disturb public order. This condition shows that Article 2 requires an implementation framework capable of managing the relationship between these two legal orders. The discussion of legal pluralism and legality leads to the need to examine how customary law actually operates in dispute resolution. This is important because the recognition of living law under Article 2 will remain abstract if it is not connected to concrete mechanisms through which Indigenous communities resolve conflicts and restore social balance.

Accordingly, customary dispute resolution and restorative justice provide the practical dimension of the theoretical debate on living law and legal pluralism. They show how unwritten norms are translated into procedures, participation, reconciliation, and socially accepted outcomes within Indigenous communities.

¹⁶ Iwan Kurniawan, Riki Afrizal, and Antoni Putra, "The Problematics of Applying Living Law as a Basis for Criminalization in the Indonesian Criminal Code," *Jurist-Diction* 9, no. 1 (January 30, 2026): 115-36, <https://doi.org/10.20473/jd.v9i1.76922>.

¹⁷ Jaclyn L. Neo, "State Legal Pluralism and Religious Courts," in *The Oxford Handbook of Global Legal Pluralism* (Oxford University Press, 2020), 879-900, <https://doi.org/10.1093/oxfordhb/9780197516744.013.8>.

¹⁸ Ali Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform," *Jambe Law Journal* 8, no. 1 (July 7, 2025): 255-85, <https://doi.org/10.22437/home.v8i1.502>.

¹⁹ Jansen Edinata Simanjuntak et al., "Customary Law and Multiple Legal Systems in Criminal Justice: Indonesia's Penal Reform Experience," *Architecture Image Studies* 6, no. 3 (December 3, 2025): 1864-80, <https://doi.org/10.62754/ais.v6i3.528>.

Customary Dispute Resolution and Restorative Justice

Customary dispute resolution is closely related to restorative justice because both emphasize the restoration of social balance rather than merely the imposition of punishment. In many Indigenous communities, dispute resolution is directed toward reconciliation, acknowledgment of wrongdoing, compensation, restoration of communal harmony, and prevention of future conflict.²⁰ The process is usually conducted through deliberation involving customary leaders, elders, families, and the disputing parties. This shows that justice is understood not only as a formal legal outcome, but also as a social process.

Restorative justice has become an important concept in modern criminal law because it shifts the focus from retribution to restoration.²¹ The victim, offender, and community are not treated merely as objects of legal proceedings, but as participants in the resolution process.²² This approach is compatible with many customary law traditions in Indonesia. Customary mechanisms often seek to restore relationships and communal balance through socially accepted procedures.

In the Maya Indigenous Community, dispute resolution is conducted through customary deliberation, genealogical tracing, and customary oaths. Genealogical tracing is used to examine the historical relationship between parties and disputed land or customary territory. Customary oaths may be used when factual certainty cannot be fully established through ordinary deliberation. These mechanisms reflect a distinctive evidentiary system that differs from formal criminal procedure, but remains meaningful within the community's normative order.

Nevertheless, customary dispute resolution cannot be accepted without limits. Its application must be assessed against constitutional principles, human rights, victims' interests, equality before the law, and legal certainty. Customary mechanisms may contribute to restorative justice, but they should not be used to justify discrimination, coercion, violence, or impunity. Therefore, the recognition of customary dispute resolution under Article 2 must be accompanied by clear procedural safeguards. This confirms that customary dispute resolution and restorative justice are relevant not only as Indigenous practices, but also as practical entry points for discussing the legal consequences of living law within the criminal justice system. This requirement for procedural safeguards connects customary dispute resolution with the national criminal justice system. The central question is not whether customary mechanisms possess social legitimacy, but how their outcomes may be recognized, recorded, and assessed within formal investigation, prosecution, and court proceedings.

For that reason, the analysis must move from the internal legitimacy of customary dispute resolution to its external relationship with state criminal justice institutions. This transition is necessary to clarify the legal relevance of customary settlement outcomes under Article 2 of the Indonesian Criminal Code.

Customary Law and the National Criminal Justice System

The relationship between customary law and the national criminal justice system is the central issue in implementing Article 2 of Law Number 1 of 2023. Normatively, Article 2 recognizes living law as part of the criminal law system.²³ However, the provision does not yet provide detailed mechanisms on how customary norms are identified, how customary decisions are recorded, or how law enforcement officials should consider customary dispute resolution outcomes. This creates a gap between recognition and implementation.

In the national criminal justice system, legal certainty requires clear procedures for investigation, prosecution, adjudication, and execution.²⁴ If customary law is to be considered within this system,

²⁰ Cahya Wulandari et al., "Penal Mediation: Criminal Case Settlement Process Based on the Local Customary Wisdom of Dayak Ngaju," *Lex Scientia Law Review* 6, no. 1 (2022): 69-92.

²¹ Yotam Shem-Tov, Steven Raphael, and Alissa Skog, "Can Restorative Justice Conferencing Reduce Recidivism? Evidence From the Make-it-Right Program," *Econometrica* 92, no. 1 (2024): 61-78, <https://doi.org/10.3982/ECTA20996>.

²² Fuadi Isnawan, "Community-Based Restorative Justice for Offenders With Mental Disorders in Indonesia," *JURNAL USM LAW REVIEW* 8, no. 3 (October 28, 2025): 1665-82, <https://doi.org/10.26623/julr.v8i3.12636>.

²³ Iwan Kurniawan, Riki Afrizal, and Putra, "The Problematics of Applying Living Law as a Basis for Criminalization in the Indonesian Criminal Code."

²⁴ Frans Jomar Karinda et al., "Recovery of Assets From Perpetrators of Corruption to Maximize Recovery of State Losses," *Discourse Journal on Law and Society* 1, no. 4 (November 30, 2025): 17-24, <https://doi.org/10.70062/djls.v1i4.117>.

its recognition must be linked to identifiable institutions and accountable procedures. Customary institutions should not operate in isolation from state law when a dispute has criminal law implications.²⁵ At the same time, state institutions should not ignore customary settlements that have restored social balance and are accepted by the parties.

The integration of customary law into criminal justice must therefore be designed as a coordination mechanism rather than a replacement of state authority. Police, prosecutors, and courts may consider customary dispute resolution outcomes as relevant legal and social facts. Such consideration may influence case handling, restorative justice decisions, sentencing considerations, or the assessment of social harm.²⁶ However, this must remain subject to constitutional limits, human rights protection, victims' consent, and public order.

This article uses the Integrated Living Law Justice Model as a conceptual framework to address this relationship. The model connects the identification of Indigenous communities, the strengthening of customary institutions, coordination with law enforcement officers, constitutional principle review, and integration into criminal justice processes. The purpose is not to place customary law above state law. Rather, it aims to create a structured mechanism through which living law can contribute to substantive justice without sacrificing legality and legal certainty. This explanation strengthens the analytical connection between customary law and the national criminal justice system, particularly in relation to investigation, prosecution, adjudication, and the recognition of customary settlement outcomes. This institutional relationship also explains why previous studies need to be positioned carefully. While many studies have discussed living law, customary justice, or legal pluralism separately, the remaining gap lies in explaining how the recognition of living law under Article 2 operates in concrete Indigenous community practices and how it may be linked to criminal justice institutions.

The preceding discussion shows that living law, legal pluralism, customary dispute resolution, restorative justice, and criminal justice integration are not separate concepts. They form a connected analytical framework for understanding the Normative Recognition Empirical Actualization Gap in the implementation of Article 2.

Previous Studies and the Position of This Article

Previous studies on living law in the new Indonesian Criminal Code have generally focused on normative analysis. These studies examine the recognition of customary law, the shift from formal legality to material legality, and the constitutional implications of Article 2. Such studies are important because they clarify the doctrinal meaning of living law within Indonesian criminal law reform. However, they often do not examine how this recognition operates within concrete Indigenous community practices.

Other studies have discussed customary dispute resolution in relation to agrarian disputes, Indigenous rights, or local conflict resolution. These studies show that customary law remains socially relevant in resolving disputes involving land, territory, family relations, and communal resources. Nevertheless, many of them do not directly connect customary dispute resolution with the implementation of Article 2 of the Indonesian Criminal Code.²⁷ As a result, the relationship between customary mechanisms and the formal criminal justice process remains underexplored.

This article positions itself within that gap by using a socio legal approach to examine the Maya Indigenous Community in Raja Ampat. The article does not only discuss living law as a normative concept, but also observes how customary law is practiced through deliberation, genealogical verification, and customary oaths. The Maya Indigenous Community is selected because its customary institutions continue to function in resolving disputes and maintaining social order. This makes it a relevant empirical site for examining whether Article 2 has been actualized in practice.

²⁵ Erica Bosio and Philip McGrath, *Reforming Justice: Fostering Engagement Between Statutory Courts and Customary Law Systems* (Washington, DC: World Bank, 2025), <https://doi.org/10.1596/43186>.

²⁶ Shohib Muslim, "Customary Court Authority in Resolving Minor Violations: A National Legal Perspective," *Journal of Adat Recht* 2, no. 4 (November 30, 2025): 1-9, <https://doi.org/10.62872/twmm4p94>.

²⁷ Yoghi Arief Susanto and Feri Satria Wicaksana Effendy, "The Existence and Integration of Customary Courts within the Framework of Indonesia's National Criminal Law," *INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS* 08, no. 11 (November 29, 2025), <https://doi.org/10.47191/ijmra/v8-i11-67>.

The contribution of this article lies in identifying the Normative Recognition Empirical Actualization Gap. This gap refers to the distance between the formal recognition of living law under Article 2 and the absence of operational mechanisms connecting customary dispute resolution with investigation, prosecution, and court proceedings. By proposing the Integrated Living Law Justice Model, this article offers a conceptual bridge between customary law and the national criminal justice system. Therefore, this study contributes to criminal law scholarship, legal pluralism studies, and policy discussions on the implementation of living law in Indonesia. Accordingly, the Literature Review is maintained because it already provides a coherent theoretical basis for analyzing the empirical actualization of living law under Article 2 in the Maya Indigenous Community.

Research Design and Methodology

This study employs a socio-legal research approach that combines a normative analysis of legal provisions with an empirical examination of the implementation of legal norms in society.²⁸ This approach was chosen because the study not only focuses on the normative construction of Article 2 of Law No. 1 of 2023 on the Criminal Code, but also analyzes how this provision is implemented in the practice of dispute resolution among the Maya indigenous community in Raja Ampat Regency. Thus, this study views law not only as a set of norms (“law in the books”), but also as social behavior (“law in action”) influenced by cultural values, traditional institutional structures, and the dynamics of the relationship between state law and the “living law” within the community.²⁹

The research was conducted in Raja Ampat Regency, Southwest Papua Province, focusing on the Maya indigenous community, which to this day still maintains dispute resolution mechanisms based on customary law. The Maya Indigenous Community was selected purposively because its customary institutions remain socially functional in resolving disputes, especially those related to communal land, clan relations, and natural resource management. This location is therefore relevant to the research objective because it provides an empirical context for examining whether the recognition of living law under Article 2 of Law Number 1 of 2023 has been translated into actual dispute resolution practice. The selection of Raja Ampat also allows the study to assess the relationship between statutory recognition and the continuing authority of customary institutions in a concrete Indigenous community setting.

The research data sources consist of primary and secondary data. Primary data were obtained through in-depth interviews with the Chair of the Ambel Waigeo Indigenous Community Institution as the key informant and through field observation in Raja Ampat. The informant was selected because of his institutional position, customary authority, and direct knowledge of Maya customary dispute resolution practices. Although the study relies mainly on one key informant, the interview data were examined together with observation findings, legal documents, and previous studies to strengthen the validity of the analysis. The interviews were conducted using a semi-structured approach, allowing the informant to explain customary law practices based on empirical experience while remaining within the scope of the research focus. This primary data was then supplemented through observations of the characteristics of customary institutions and dispute resolution mechanisms still practiced by the community. Meanwhile, secondary data was obtained through a literature review that included primary, secondary, and tertiary legal sources.³⁰

Primary legal sources consist of the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 2023 on the Criminal Code, specifically Article 2 regarding the “living law” within society, as well as various laws and regulations related to the recognition of customary law communities. Secondary legal sources are drawn from articles in reputable national and international journals, scholarly books, previous research findings, and academic documents discussing legal pluralism, living law, criminal law, customary law, and dispute resolution among indigenous communities.³¹ Tertiary legal sources

²⁸ David Tan, “Revisiting Pound’s Law in Action and Ehrlich’s Living Law to Find the ‘Gap’: A Compilation of Lecture Notes,” *Journal of Judicial Review* 24, no. 2 (November 2022): 225-38, <https://doi.org/10.37253/jjr.v24i2.7220>.

²⁹ Belal Dahiam Saif Ghaleb, “Legaculturation: Turning Laws Into a Culture,” *Journal of Progressive Law and Legal Studies* 2, no. 03 (July 11, 2024): 171-88, <https://doi.org/10.59653/jplls.v2i03.886>.

³⁰ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi* (Jakarta: Kencana Prenada Media Group, 2021).

³¹ Tunggal Ansari Setia Negara, “Normative Legal Research in Indonesia: Its Origins and Approaches,” *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (February 2023): 1-9, <https://doi.org/10.22219/aclj.v4i1.24855>.

include legal dictionaries, encyclopedias, and various other supporting documents relevant to the research.

Data collection was conducted using three methods: document analysis, in-depth interviews, and observation. Document analysis was used to identify developments in regulations regarding “living law” within the Indonesian criminal justice system, while interviews were conducted to obtain an empirical understanding of the dispute resolution mechanisms that have evolved within the Maya indigenous community. Observation was used to understand the relationship between traditional institutional structures, patterns of dispute resolution, and the implementation of customary legal values in community life.

The observation was descriptive and focused on the existence of customary institutions, the role of customary leaders, community recognition of customary authority, and the use of deliberation, genealogical verification, and customary oaths in dispute resolution. The observation did not aim to quantify community behavior, but to support the interpretation of interview data and legal materials. The observation results were compared with statutory regulations, previous studies, and the key informant’s statements to ensure that the empirical findings remained connected to the normative framework of Article 2 of the Indonesian Criminal Code. Data analysis was conducted qualitatively using an interactive analysis model that included data reduction, data presentation, and drawing conclusions.

The interview data were analyzed through thematic classification by identifying statements related to the practice of living law, customary dispute resolution procedures, the authority of customary institutions, and the relationship between customary law and state law. The validity of the interview data was strengthened through qualitative triangulation by comparing the informant’s statements with observation notes, statutory regulations, and relevant academic literature. This process was used to reduce subjective interpretation and to ensure that the empirical themes were consistent with the study’s socio-legal approach. The main legal materials considered in this process included the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 2023 concerning the Indonesian Criminal Code, and regulations concerning the recognition of Indigenous communities.

The data reduction stage was conducted by selecting information relevant to Article 2 of Law Number 1 of 2023 and excluding information outside the focus of the study. The data presentation stage was carried out by arranging the findings into analytical themes, including customary deliberation, genealogical verification, customary oaths, institutional legitimacy, and the absence of formal coordination with law enforcement officials. The conclusion drawing stage was conducted by comparing these empirical themes with the normative framework of Article 2, the theory of living law, legal pluralism, and criminal law policy.³²

At this stage, the analysis examined whether themes such as customary deliberation, genealogical verification, customary oaths, institutional legitimacy, and the absence of formal coordination with law enforcement officers were supported by interview data, field observation, legal documents, and previous studies. This integrated reading allowed the findings to remain grounded in empirical data while still being accountable within normative legal analysis. The validation process in this study is therefore qualitative rather than statistical, consistent with the socio-legal objective of understanding the relationship between legal norms and social practices.

This study has methodological limitations that must be acknowledged. The empirical data are primarily based on one key informant from the Ambel Waigeo Indigenous Community Institution and field observation in Raja Ampat. Therefore, the findings should not be generalized to all Indigenous communities in Indonesia, because each community has different customary structures, dispute resolution mechanisms, and relationships with state institutions. The results should be understood as a contextual socio-legal analysis of the Maya Indigenous Community and as a basis for further comparative research involving other Indigenous communities and law enforcement institutions.

³² Ratih Lestari, “The Sociological Perspective on The Study of The Living Law: Is It a Part of Legal Discipline or Social Discipline?,” *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (December 2023): 448-64, <https://doi.org/10.29303/ius.v11i3.1270>.

Findings and Discussion

An Analysis of the Implementation of Article 2 of Law No. 1 of 2023 in the Resolution of Disputes Involving the Maya Indigenous Community in Raja Ampat Regency

The enactment of Law No. 1 of 2023 on the Criminal Code marks an important milestone in the history of criminal law reform in Indonesia.³³ For more than a century, Indonesia's criminal justice system has been based on the *Wetboek van Strafrecht* (WvS), inherited from the Dutch colonial government. The system is built on the paradigm of legal positivism, a view that regards written law as the sole binding source of law. Consequently, the norms that exist within indigenous communities have not been given adequate recognition within the national criminal justice system.³⁴ The reforms enacted through Law No. 1 of 2023 seek to shift this paradigm by recognizing "living law" as affirmed in Article 2 of the Criminal Code. This subsection therefore places Article 2 as the normative starting point for examining whether living law has been empirically actualized in the dispute resolution practices of the Maya Indigenous Community.

Article 2 is significant because it expands the principle of legality by allowing living law to be considered within criminal law, provided that it remains consistent with Pancasila, the 1945 Constitution, human rights, and general legal principles.³⁵ Thus, the main issue is not the existence of normative recognition, but whether such recognition can be operationalized through clear standards, evidentiary mechanisms, and institutional coordination.³⁶ This point is important because the implementation of Article 2 depends on the ability of the national criminal justice system to connect statutory recognition with the actual operation of customary law in Indigenous communities.

Research findings indicate that this situation is very evident among the indigenous Maya communities in Raja Ampat Regency.³⁷ Based on an interview with the Chair of the Ambel Waigeo Indigenous People's Institution, the Maya community continues to regard customary law as the primary instrument for resolving various disputes that arise within the community. The interview findings show that disputes involving customary land boundaries, clan relations, natural resources, and inherited communal land are generally first brought before customary authorities. These disputes are not treated merely as conflicts over ownership, but as matters concerning genealogy, territorial history, communal identity, and social balance. The customary forum examines oral explanations from the parties, the knowledge of customary elders, natural boundary markers, and the history of inheritance or communal control. This shows that the Maya community maintains its own evidentiary logic, which differs from formal documentary evidence but remains socially authoritative within the community. The social authority of this evidentiary logic is important because it shows that customary law continues to guide community behavior even before it is formally connected to criminal justice institutions.

This study found that dispute resolution always begins through a traditional deliberation mechanism. The deliberation is led by the tribal chief and facilitated by the Indigenous Peoples' Institution as the institution that holds social legitimacy within the community.³⁸ The parties are given the opportunity to explain their genealogical connection to the disputed land through family lineage, history of territorial control, and the collective memory of customary elders. If deliberation does not produce agreement,³⁹ the customary oath may be used as a final truth seeking mechanism with moral and spiritual force within the community. However, genealogical proof and customary oaths should be

³³ Abdul Wahid, Amiruddin Hanafi, and Syachdin Syachdin, "Integration of Local and Universal Values in Indonesian Criminal Law Reform," *Academia Open* 10, no. 2 (July 23, 2025), <https://doi.org/10.21070/acopen.10.2025.11335>.

³⁴ Firdaus Arifin et al., "Recognition of Customary Norms Within the Framework of Indonesian Legal Positivism," *Khazanah Hukum* 7, no. 1 (April 7, 2025): 92-104, <https://doi.org/10.15575/kh.v7i1.39409>.

³⁵ Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform."

³⁶ Yahya Ahmad Zein et al., "Indigenous, Diversity, and the Future of Human Rights in Regional Legal Systems," *Journal of Human Rights, Culture and Legal System* 5, no. 2 (August 28, 2025): 581-607, <https://doi.org/10.53955/jhcls.v5i2.573>.

³⁷ Interview with Yohanis Tebu, Head of the Maya Indigenous Community, Raja Ampat Regency, 17 June 2026, 5:30 p.m. WITA.

³⁸ Helda Lariana and Benny Djaja, "The Role of Notaries in Ensuring Legal Certainty in Acquiring Land Rights Based on Inheritance in Indigenous Communities," *JIHAD: Jurnal Ilmu Hukum Dan Administrasi* 7, no. 2 (May 31, 2025), <https://doi.org/10.58258/jihad.v7i2.8830>.

³⁹ Jebuni Benjamin Mensah and Linus D. Nangwele, "Indigenous Approaches to Conflict Resolution Among the Kaleo People in Northwestern Ghana," *International Journal of Social Science and Human Research* 09, no. 03 (March 31, 2026), <https://doi.org/10.47191/ijsshr/v9-i3-69>.

understood as socially binding customary evidence, not as independent formal evidence for criminal liability, because their relevance under Article 2 must remain limited by due process, human rights, legality, and legal certainty. This limitation confirms that the recognition of living law must be balanced with constitutional safeguards so that customary mechanisms support justice without replacing the authority of the national criminal justice system.

From the perspective of the Living Law theory proposed by Eugen Ehrlich,⁴⁰ these findings indicate that the customary law of the Maya people fulfills all the characteristics of a living legal system within society. Law is not merely understood as norms codified in legislation, but as a set of rules that are actively observed and enforced by the community in their daily lives. The existence of indigenous community institutions, tribal chiefs, deliberative mechanisms, genealogical evidence, and the validity of customary oaths demonstrates that the Maya community possesses a comprehensive legal system, ranging from the formation of norms, institutional structures, dispute resolution procedures, to the enforcement of customary rulings. The existence of customary law within the Maya community cannot be viewed merely as a custom; rather, it has evolved into a “living law” in both sociological and legal terms.⁴¹

Legal pluralism, as developed by John Griffiths, refers to a situation in which the state legal system and customary law coexist within the same social space.⁴² Each has different sources of legitimacy, dispute resolution mechanisms, and levels of compliance. In Maya communities, customary law actually plays a more dominant role than state law in resolving disputes over communal land rights. The state is not the first institution people turn to when a conflict arises; rather, it only intervenes once the conflict has escalated into a serious criminal offence such as murder or has disrupted public order. This fact demonstrates that legal pluralism in Indonesia is not merely a theoretical concept, but an empirical reality that continues to this day.

Nevertheless, this study also found that the normative recognition of “living law” in Article 2 of the Criminal Code has not been fully realized in the practice of resolving disputes among indigenous communities. No mechanism was found that links the outcomes of customary dispute resolution to the national criminal justice system. This absence of mechanism is the core of the Normative Recognition Empirical Actualization Gap. Customary settlement may restore social balance and be accepted by the community,⁴³ but its position in investigation, prosecution, and court proceedings remains uncertain. As a result, Article 2 has not yet created an operational bridge between customary legitimacy and formal criminal legality. This condition shows that living law has been recognized normatively, but has not yet been institutionally actualized within the national criminal justice system. This finding strengthens the article’s main argument that the implementation problem of Article 2 lies in the Normative Recognition Empirical Actualization Gap, not in the absence of living law within the Maya Indigenous Community.

From the perspective of criminal law policy, this situation indicates that the drafters of the new law have successfully resolved the issue at the policy formulation stage by incorporating recognition of “living law” into the National Criminal Code.⁴⁴ However, these amendments have not yet been accompanied by application policies or execution policies that govern the procedures for implementing Article 2 in law enforcement practice. To date, there are no guidelines regarding the mechanisms for identifying “living law,” the procedures for proving customary law in court, the standards for recognizing customary institutions, or the legal relationship between customary rulings and state court rulings. This regulatory gap creates uncertainty for both Indigenous communities and law enforcement officials. Indigenous communities may assume that customary settlement has resolved the dispute completely, while law enforcement officials may still treat it as a social event outside the formal legal

⁴⁰ Ana Maria Vargas Falla, Ebba Brink, and Emily Boyd, “Quiet Resistance Speaks: A Global Literature Review of The Politics of Popular Resistance to Climate Adaptation Interventions,” *World Development* 177 (May 2024): 106530, <https://doi.org/10.1016/j.worlddev.2023.106530>.

⁴¹ Vargas Falla, Brink, and Boyd.

⁴² Margaret O’Brien, “Legal Pluralism and Stigma: A Case-Study of Customary Resurgence in The Chakma Communities of Bangladesh and India,” *International Journal of Law in Context* 17, no. 3 (September 11, 2021): 356-70, <https://doi.org/10.1017/S1744552321000434>.

⁴³ Teguh Hariyono, “Mediasi Penal Sebagai Alternatif Upaya Penyelesaian Perkara Pidana Di Luar Pengadilan,” *Jurnal Penegakan Hukum Dan Keadilan* 2, no. 1 (April 2021), <https://doi.org/10.18196/jphk.v2i1.8731>.

⁴⁴ Dion Ario et al., “Living Law, Kepastian Hukum, Dan Hak Asasi Manusia: Politik Hukum Dalam KUHP 2023 Di Indonesia,” *Lentera* 7, no. 1 (December 31, 2025): 31-42, <https://doi.org/10.32505/lentera.v7i1.13426>.

process. Therefore, Article 2 requires procedural rules on the identification of living law, proof of customary norms, recognition of customary institutions, and the legal relevance of customary settlement outcomes. Without such rules, the recognition of living law remains declaratory rather than operational.

The findings of this study reveal a gap that the author refers to as the “Normative Recognition-Empirical Actualization Gap”. This gap refers to the discrepancy between the statutory recognition of living law and the absence of institutional mechanisms for applying it in criminal justice practice. In the Maya Indigenous Community, customary deliberation, genealogical tracing, and customary oaths continue to function as living law with strong social legitimacy. However, these customary outcomes have no clear procedural position in investigation, prosecution, or court proceedings. The gap therefore lies not in the existence of customary law, but in the absence of a formal mechanism to recognize and assess it within the national criminal justice system.

This situation also demonstrates that the success of Article 2 cannot be measured solely by the recognition of living law in legislation. Rather, the success of its implementation must be measured by the state’s ability to foster harmonious relations between customary institutions and law enforcement agencies through mechanisms that provide legal certainty while respecting the existence of customary law communities.⁴⁵ Therefore, the implementation of Article 2 requires not only normative recognition but also the formulation of operational policies capable of integrating customary law into the national criminal justice system without eliminating the fundamental characteristics of each legal system.

Based on these overall findings, this study concludes that the indigenous Maya community had in fact been implementing the principles of “living law” long before Article 2 of Law No. 1 of 2023 came into effect. Accordingly, the implementation of Article 2 in the Maya Indigenous Community reveals one central finding: living law is empirically active but institutionally disconnected from the national criminal justice system. Customary deliberation, genealogical tracing, and customary oaths prove that customary law continues to regulate disputes and restore social balance within the community. Nevertheless, the recognition of such living law must remain limited by Pancasila, the 1945 Constitution, human rights, victims’ interests, the principle of legality, and legal certainty. The main challenge is therefore to transform statutory recognition into an accountable coordination mechanism between customary institutions and law enforcement officers. Accordingly, this subsection is maintained because it already shows the connection between normative recognition, empirical customary practices, and the need for institutional mechanisms in implementing Article 2.

A Conceptual Model for the Integration of Living Law into the National Criminal Justice System

The research findings indicate that the main issue in the implementation of Article 2 of Law No. 1 of 2023 does not lie in the existence of a provision recognizing “living law,” but rather in the lack of mechanisms capable of linking the customary law system with the national criminal justice system. This confirms that the problem addressed in this subsection is operational rather than normative, because living law has already been recognized in legislation but has not yet been connected to the institutional procedures of investigation, prosecution, and adjudication. The normative recognition provided through Article 2 has granted constitutional legitimacy to the existence of customary law; however, this legitimacy has not yet been accompanied by regulations regarding implementation procedures, institutional coordination, or the legal consequences of dispute resolution conducted through customary institutions.⁴⁶ As a result, customary law and state law continue to operate in parallel without a clear point of convergence in law enforcement practice.

In criminal law policy, this situation indicates that the reform of the Criminal Code has only reached the policy formulation stage, namely incorporating recognition of “living law” into positive

⁴⁵ Bosio and McGrath, *Reforming Justice: Fostering Engagement Between Statutory Courts and Customary Law Systems*.

⁴⁶ Nella Sumika Putri, “The Material Content of Regional Regulations as the Concretization of the Living Legal System in Society (Adat Law) Based on Article 2 of the Indonesian Penal Code (KUHP) 2023,” *Jurnal Bina Mulia Hukum* 7, no. 2 (March 2023): 231-42, <https://doi.org/10.23920/jbmh.v7i2.1101>.

law.⁴⁷ Furthermore, this policy has not yet been implemented at the application policy and execution policy levels. In fact, the success of a criminal law reform is determined not only by the quality of the norms established but also by the ability of those norms to be effectively enforced by law enforcement officials. Thus, the existence of Article 2 requires operational instruments that can bridge the relationship between customary law communities, law enforcement officials, and judicial institutions.

Based on the results of field research, the dispute resolution mechanism that has developed within the Maya indigenous community actually has a relatively comprehensive structure. Disputes are resolved through traditional deliberations involving the tribal chief, the Indigenous Community Council (LMA), traditional elders, and the disputing parties. This process is based on tracing family lineages, the history of land tenure, and natural boundaries, and is reinforced, when necessary, by traditional oath-taking mechanisms. The entire process aims to restore balance in social relations, rather than merely determining a winner or loser. These characteristics demonstrate that customary mechanisms are aligned with the goals of modern criminal justice, which emphasize restoration, reconciliation, and social harmony.⁴⁸

Problems arise when the outcomes of customary dispute resolution lack a clear legal connection to the national criminal justice system. In practice, law enforcement officials do not yet have guidelines on how the results of customary deliberations can be taken into account during investigations, prosecutions, or court proceedings.⁴⁹ This situation has led to customary resolutions being viewed merely as social resolutions that carry no legal consequences within the criminal justice system. As a result, a case that has been resolved under customary law may still be subject to further proceedings through the state legal system, without taking into account the values of justice that have already been restored within the indigenous community.

Based on these findings, this study proposes a conceptual model known as the Integrated Living Law Justice Model (ILLJM). This model was developed as a framework for integrating living law, as recognized in Article 2 of Law No. 1 of 2023, with the national criminal justice system. Unlike approaches that treat customary law and state law as two separate systems, this model views both as complementary legal systems in the pursuit of substantive justice. To make this model more operational, the Integrated Living Law Justice Model must be understood as a staged coordination mechanism rather than merely a conceptual bridge. Each stage requires a clearly identified institution, a recordable procedure, and a legal function within the criminal justice process. The model does not place customary law above state law, but provides a mechanism through which customary dispute resolution may be recognized as a relevant legal and social consideration. Therefore, the model is designed to connect customary legitimacy with legality, legal certainty, human rights protection, and the authority of the national criminal justice system. In this sense, the Integrated Living Law Justice Model functions as a staged coordination framework, not as a mechanism for replacing the authority of the police, prosecutors, or courts.

This conceptual model is based on five main stages. These stages are maintained because they provide a logical sequence from the recognition of Indigenous communities to the formal consideration of customary settlement outcomes within criminal justice procedures. The first stage is the identification of customary law communities.⁵⁰ At this stage, the state, through local governments, verifies the existence of customary law communities and their customary territories, institutional structures, and living legal norms. The institution authorized at this stage is the local government, in coordination with customary institutions, relevant regional agencies, and community representatives. Verification should include the existence of the Indigenous community, customary territory, customary leadership structure, applicable customary norms, and dispute resolution procedures that are still obeyed by the community. The result of this verification should be recorded in an administrative document, regional policy instrument, or official recognition mechanism in accordance with applicable

⁴⁷ Antoni Putra et al., "Living Law on the Margins: A Critical Review of Article 2 of the 2023 Indonesian Penal Code," *Jurnal Hukum Dan Peradilan* 15, no. 1 (March 2026): 81-110, <https://doi.org/10.25216/jhp.15.1.2026.81-110>.

⁴⁸ Hatarto Pakpahan, "Customary Justice System and State Criminal Law: A Model of Reconciliation in Indonesia," *Journal of Criminology and Criminal Law* 63, no. 3 (December 1, 2025): 81, <https://doi.org/10.47152/rkkp.63.3.5>.

⁴⁹ Emilianus Jimmy Ell, "Implementasi Living Law Dalam Pasal 2 Kitab Undang-Undang Hukum Pidana Nasional: Analisis Normatif Terhadap Pengakuan Hukum Adat Arfak Dan Doreri Di Manokwari," *Mansinam Law Review* 1, no. 2 (2025).

⁵⁰ Sumika Putri, "The Material Content of Regional Regulations as the Concretization of the Living Legal System in Society (Adat Law) Based on Article 2 of the Indonesian Penal Code (KUHP) 2023."

laws and regulations. This stage is important to prevent arbitrary claims of living law and to ensure that only norms with clear social legitimacy may be considered under Article 2 of the Indonesian Criminal Code. This stage is important to ensure that the customary law to be recognized truly meets the criteria for “living law” as referred to in Article 2 of the Criminal Code.

The second phase is the strengthening of customary institutions.⁵¹ Indigenous Peoples’ Institutions are not only viewed as sociocultural institutions, but also as strategic partners of law enforcement agencies in resolving conflicts that arise within communities. This strengthening can be achieved through administrative recognition, institutional capacity building, and the development of operational standards for dispute resolution that respect the characteristics of customary law in each region. At this stage, the authorized institutions are the recognized customary institution and the local government as the supporting administrative authority. The customary institution should be encouraged to prepare basic procedural standards for dispute resolution, including summons to the parties, deliberation procedures, involvement of customary elders, verification of genealogical or territorial claims, and formulation of settlement outcomes. The result of customary deliberation should be written in a customary settlement record signed or acknowledged by the customary institution, the disputing parties, and witnesses from the community. This record does not automatically replace a court judgment but may serve as evidence of social settlement and as a basis for further consideration by law enforcement officials.

The third phase involves coordination mechanisms with law enforcement agencies.⁵² At this stage, every case involving indigenous communities must first be assessed for the possibility of resolution based on customary law. The police, the prosecutor’s office, and the judiciary are authorized to consider the outcome of customary resolutions as one of the bases for determining case handling policies, provided that such resolutions do not conflict with human rights, the interests of victims, or public order. In the investigation stage, the police may use the customary settlement record as information for assessing the social background of the dispute, the restoration of harm, the position of the victim, and the possibility of restorative case handling. In the prosecution stage, the prosecutor may consider the customary settlement outcome when evaluating whether the case still requires formal prosecution, whether restorative justice is possible, or whether the settlement may be submitted as a relevant consideration in the case file. In the court stage, the judge may consider the customary settlement as part of the social facts of the case, especially in assessing restoration, victim participation, community acceptance, and sentencing considerations. However, such consideration must not eliminate the court’s authority to determine criminal responsibility when the offence concerns serious violence, coercion, public order, or the protection of fundamental rights. Thus, customary resolutions are not viewed as competing with the state legal system, but rather as part of a law enforcement process oriented toward restorative justice.

The fourth stage is the review of constitutional principles.⁵³ Not all customary norms can automatically be applied as living law. Therefore, each customary norm must be tested for its compatibility with Pancasila, the 1945 Constitution of the Republic of Indonesia, respect for human rights, the principle of nondiscrimination, and general legal principles recognized by the international community. This review is necessary to ensure that the recognition of living law does not result in a violation of citizens’ constitutional rights. The constitutional principle review should be conducted by law enforcement officials and, when necessary, assessed by the court in the relevant criminal process. The review must ensure that the customary norm or customary settlement does not contradict Pancasila, the 1945 Constitution, human rights, equality before the law, victims’ interests, the principle of legality, and legal certainty. A customary settlement should not be recognized if it is obtained through coercion, excludes the victim, discriminates against vulnerable groups, or imposes sanctions that degrade human dignity. This limitation is essential because the recognition of living law under Article 2 must operate within the framework of a constitutional rule of law state.

⁵¹ Muhammad Rusli Arafat, Margo Hadi Pura, and Taun Taun, “Tantangan Dan Peluang Integrasi Hukum Adat Dalam Sistem Hukum Pidana Indonesia Pasca Undang-Undang Nomor 1 Tahun 2023 Tentang KUHP,” *Proceedings Series on Social Sciences & Humanities* 27 (2025): 253-260.

⁵² Putra et al., “Living Law on the Margins: A Critical Review of Article 2 of the 2023 Indonesian Penal Code.”

⁵³ Sarip Hidayat et al., “Pergeseran Asas Legalitas Formal Ke Material Dalam KUHP Baru Dan Konsekuensinya Terhadap Hukum Adat,” *Jurnal Hukum Mimbar Justitia* 11, no. 1 (2025).

The final stage is integration into the national criminal justice system.⁵⁴ At this stage, the outcome of customary dispute resolution serves as one of the legal considerations for law enforcement officials in determining the resolution of a case. The integration stage requires a formal channel for submitting and recording customary settlement outcomes within the criminal justice process. The customary institution may issue a written record containing the identity of the parties, the type of dispute, the customary procedure used, the participation of the victim, the agreed settlement, and confirmation that the settlement was reached voluntarily. This record may then be attached to the investigation file, considered in prosecutorial assessment, or submitted as a relevant document before the court. Through this mechanism, customary settlement is not treated as an informal event outside the legal process, but as a documented social resolution that may be examined according to the standards of criminal procedure. This integration does not eliminate the state's authority to enforce criminal law, but rather provides space for customary law to contribute to the realization of a more substantive form of justice. Thus, the state continues to uphold the principle of the supremacy of law, while at the same time respecting the existence of customary law communities as part of the constitutional identity of the Indonesian nation.

The Integrated Living Law Justice Model proposed in this study has three main advantages. First, this model provides legal certainty because the relationship between customary institutions and law enforcement officials is established through clear coordination mechanisms. Second, this model strengthens the protection of customary law communities through the recognition of dispute resolution mechanisms that have been in place for generations. Third, this model supports the more operational implementation of Article 2 of Law No. 1 of 2023 so that the recognition of living law does not stop at the normative level but truly becomes part of the national criminal justice system. Nevertheless, the Integrated Living Law Justice Model has clear limits of application. It should be applied primarily to disputes in which customary settlement is socially recognized, the victim or affected party participates voluntarily, and the settlement does not conflict with public order or fundamental rights. The model should not be used to legitimize impunity, suppress victims, avoid accountability for serious criminal offences, or justify discriminatory customary practices. Accordingly, the operational strength of the model lies in its ability to recognize living law while preserving the authority of the state, the protection of victims, the principle of legality, and legal certainty.

Based on this operational formulation, the Integrated Living Law Justice Model may be summarized as follows. To make the stages, authorized institutions, and legal functions of the Integrated Living Law Justice Model easier to understand, the model can be presented in the following table.

Table 1.
Integrated Living Law Justice Model for the Implementation of Article 2 of the Indonesian Criminal Code

Stage	Authorized Institution	Main Legal Function	Output or Legal Relevance
Identification of Indigenous communities.	Local government in coordination with customary institutions, relevant regional agencies, and community representatives.	Verifying the existence of Indigenous communities, customary territories, customary leadership structures, living legal norms, and dispute resolution procedures.	Administrative recognition or official record as the basis for determining whether a customary norm qualifies as living law under Article 2.
Strengthening of customary institutions.	Recognized customary institutions and local government.	Strengthening the institutional capacity of customary bodies and preparing basic standards for customary dispute resolution.	Written customary settlement record signed or acknowledged by the customary institution, disputing parties, and community witnesses.

⁵⁴ Ell, "Implementasi Living Law Dalam Pasal 2 Kitab Undang-Undang Hukum Pidana Nasional: Analisis Normatif Terhadap Pengakuan Hukum Adat Arfak Dan Doreri Di Manokwari."

Coordination with law enforcement officers.	Police, prosecutors, courts, and customary institutions.	Assessing the relevance of customary settlement outcomes in investigation, prosecution, and court proceedings.	Customary settlement may be considered as social and legal information without eliminating the authority of the state criminal justice system.
Constitutional principle review.	Law enforcement officers and, when necessary, the court.	Ensuring that customary norms and settlement outcomes do not conflict with Pancasila, the 1945 Constitution, human rights, victims' interests, legality, and legal certainty.	Customary settlement may be recognized only if it is voluntary, non-discriminatory, and consistent with constitutional safeguards.
Integration into the national criminal justice system.	Police, prosecutors, and courts.	Placing customary settlement outcomes within formal criminal justice procedures as relevant consideration.	Customary settlement record may be attached to the investigation file, considered in prosecutorial assessment, or submitted before the court.

Source: Author's elaboration from findings.

The table shows that the Integrated Living Law Justice Model does not replace the authority of the national criminal justice system. Its function is to clarify how each institution may perform a specific role without dissolving the distinction between customary authority and state criminal jurisdiction. Instead, it creates a structured coordination mechanism through which customary institutions, local governments, police, prosecutors, and courts may each perform a limited legal function. This structure is important because the main problem in implementing Article 2 is not the absence of normative recognition, but the absence of an operational mechanism connecting customary dispute resolution with formal criminal justice procedures.

As summarized in the table, local governments function at the verification stage, customary institutions function at the dispute settlement and recording stage, and law enforcement officers function at the assessment and integration stage. This division of institutional roles strengthens the legal clarity of the model because customary settlement outcomes are treated as relevant legal and social considerations, not as automatic substitutes for criminal investigation, prosecution, or court judgment. This division of roles makes the model easier to operationalize because each institution has a specific responsibility. It also ensures that customary settlement outcomes may be recognized without weakening human rights, victims' interests, the principle of legality, legal certainty, and the authority of the court. In this way, the model creates a structured path for integrating living law into the national criminal justice system without dissolving the distinction between customary authority and state criminal jurisdiction. Accordingly, this subsection is maintained because it already explains the operational relevance of the Integrated Living Law Justice Model in connecting customary institutions with the national criminal justice system while preserving state authority, legality, and constitutional safeguards. Thus, this study confirms that the future of criminal law reform in Indonesia cannot be achieved merely by recognizing the existence of "living law" within the legal system. Such reform must be accompanied by the establishment of institutional mechanisms capable of linking customary law with the criminal justice system in a structured, accountable, and restorative justice-oriented manner.⁵⁵ Only through such integration can the objective of Article 2 of Law No. 1 of 2023 to establish a criminal justice system rooted in Indonesian legal values be truly realized.

⁵⁵ Putra et al., "Living Law on the Margins: A Critical Review of Article 2 of the 2023 Indonesian Penal Code."

Theoretical and Legal Implications for the Implementation of Article 2 of Law No. 1 of 2023

The findings of this study indicate that the reform of criminal law through Law No. 1 of 2023 has brought about a fundamental paradigm shift in Indonesia's criminal justice system.⁵⁶ The implications of this finding can be divided into theoretical implications and legal implications. This distinction is maintained to show that the recognition of living law under Article 2 produces two different consequences: theoretically, it strengthens living law theory and legal pluralism, while legally, it requires operational instruments for implementation in the national criminal justice system. Theoretically, the recognition of living law strengthens the argument that criminal law cannot be understood only through written statutory norms, especially in a plural society where customary institutions continue to regulate social relations. Legally, the recognition of living law requires implementation instruments so that Article 2 does not remain a declaratory norm. This distinction is important because the theoretical acceptance of legal pluralism will not have practical meaning unless it is followed by clear rules for its application in the criminal justice system. Until now, the principle of legality has always been narrowly interpreted as a principle that recognizes only the validity of written law (*lex scripta*). Through Article 2 of the Criminal Code, the legislature has broadened the meaning of the principle of legality by recognizing the existence of "living law" within society as one of the sources of criminal law.⁵⁷ This change represents a progressive step because it indicates that Indonesia's criminal justice system is beginning to shift from a paradigm of legal centralism toward legal pluralism, which is more in line with the character of Indonesian society as a nation marked by cultural diversity and customary law communities.

Furthermore, the research findings indicate that this transformation remains largely normative. The recognition of "living law" in Article 2 has not yet been fully accompanied by a paradigm shift in law enforcement practices. Law enforcement officials still base their investigative, prosecutorial, and case-review actions on a legalistic approach that treats written law as the sole basis for resolving cases.⁵⁸ On the other hand, the indigenous Maya community continues to use customary law mechanisms as the primary means of resolving disputes, as these mechanisms are considered more effective at restoring social relationships, preserving clan honor, and maintaining the balance of indigenous community life. This situation demonstrates that normative recognition of "living law" has not yet succeeded in altering the dynamics between state law and customary law in the practice of dispute resolution.

From the perspective of the Living Law theory developed by Eugen Ehrlich, this situation actually demonstrates that state law has not yet been fully able to accommodate the law that is truly alive in society.⁵⁹ Ehrlich asserts that the center of gravity of legal development does not lie in legislation, but rather in the social life of the community. The findings of this study reinforce this theory because the indigenous Maya community continues to rely on customary law as the primary basis for dispute resolution, even after the enactment of the National Criminal Code. The theoretical implication of this finding is that Ehrlich's living law theory remains relevant for explaining the authority of customary law in the Maya Indigenous Community. The validity of customary law in this community is not derived from formal codification, but from social obedience, collective memory, customary leadership, and the continuing acceptance of dispute resolution mechanisms. Customary deliberation, genealogical verification, and customary oaths show that law may operate effectively as a social norm before it is recognized by the state. Therefore, Article 2 should be understood as the statutory recognition of a legal reality that has already existed in the community. This demonstrates that the applicability of a legal norm is determined not only by the legislature but also by the level of social legitimacy that the norm holds within the community.

The findings of this study also support the theory of legal pluralism proposed by John Griffiths. Griffiths explains that in a pluralistic society, there will always be more than one legal system

⁵⁶ Sumika Putri, "The Material Content of Regional Regulations as the Concretization of the Living Legal System in Society (Adat Law) Based on Article 2 of the Indonesian Penal Code (KUHP) 2023."

⁵⁷ Icha Sri Herlina and Happy Yulia Anggraeni, "Harmonisasi Asas Legalitas Formal Dengan Pengakuan Hukum Yang Hidup Di Masyarakat (Living Law) Dalam Kitab Undang-Undang Hukum Pidana Nasional," *Jurnal Hukum Lex Generalis* 6, no. 7 (2025).

⁵⁸ Putra et al., "Living Law on the Margins: A Critical Review of Article 2 of the 2023 Indonesian Penal Code."

⁵⁹ Ell, "Implementasi Living Law Dalam Pasal 2 Kitab Undang-Undang Hukum Pidana Nasional: Analisis Normatif Terhadap Pengakuan Hukum Adat Arfak Dan Doreri Di Manokwari."

coexisting simultaneously.⁶⁰ This study demonstrates that legal pluralism in Indonesia is not merely an academic concept, but an empirical reality that exists within indigenous communities. The theoretical implication also strengthens John Griffiths' concept of legal pluralism because the Maya Indigenous Community demonstrates the coexistence of customary law and state law in the same social space. Customary law operates as the first mechanism for resolving communal land and clan related disputes, while state law becomes relevant when disputes escalate into serious criminal offences or public order disturbances. This shows that legal pluralism in Indonesia is not only a matter of normative recognition, but also a lived institutional practice. Accordingly, criminal law theory in Indonesia must be developed by taking seriously the interaction between state legality and customary legitimacy. This means that Article 2 should be understood not only as a statutory provision, but also as a theoretical entry point for developing Indonesian criminal law in a plural legal society. The state legal system and the customary legal system have different sources of legitimacy but are both observed by the community depending on the context of dispute resolution. Therefore, an approach that treats state law as the sole mechanism for dispute resolution is no longer sufficient to explain the legal dynamics within Indonesia's diverse society.

The criminal law policies examined in this study indicate that Indonesia's criminal law reform still requires updates in terms of implementation.⁶¹ From the perspective of criminal law policy, the theoretical implication of this study is that reform should not stop at the formulation of norms. Recognition of living law under Article 2 shows progress at the policy formulation stage, but it still requires application policy and execution policy. Application policy is needed to guide police, prosecutors, and judges in considering customary dispute resolution outcomes. Execution policy is needed to ensure that the recognition of customary law can be implemented without weakening legality, due process, human rights protection, and legal certainty. According to Marc Ancel, Criminal law reform does not stop at changes to legal norms but must be accompanied by institutional changes, changes to law enforcement mechanisms, and changes in the orientation of the penal system.⁶² In the context of Article 2 of Law No. 1 of 2023, this study shows that the legislature has successfully implemented reforms at the formulation level, but these have not yet been followed by reforms at the application or implementation levels. As a result, law enforcement officials do not yet have clear guidelines on how customary law can be taken into account as part of the criminal law enforcement process.

These findings have significant implications for the development of Indonesia's criminal justice system. Recognition of "living law" should not be understood as granting unlimited authority to indigenous communities to resolve all criminal cases outside the state legal system. Rather, this recognition must be viewed as an integrative mechanism that allows customary law to function as part of the national legal system while upholding constitutional principles, the protection of human rights, equality before the law, and legal certainty. Thus, the relationship between customary law and state law is complementary, not competitive.

In the context of the Maya indigenous community, research findings show that traditional deliberative mechanisms, proof based on genealogy, and the use of traditional oaths have proven capable of maintaining social stability within the community for many years. The success of these mechanisms is not only due to the existence of customary sanctions but primarily because of the high level of social legitimacy that the community grants to customary institutions. Therefore, the existence of customary law should be viewed as social capital that the state can utilize in building a more just system for resolving criminal cases.

The legal implications of this study are more operational. These legal implications are directed toward the formulation of concrete regulatory instruments, including implementing regulations, standards for recognizing Indigenous communities, evidentiary mechanisms for customary law, institutional coordination procedures, and constitutional limits for the application of living law. First,

⁶⁰ Putra et al., "Living Law on the Margins: A Critical Review of Article 2 of the 2023 Indonesian Penal Code."

⁶¹ Milenia Ramadhani, "Tantangan Implementasi Pengakuan Hukum Adat Dalam Kitab Undang-Undang Hukum Pidana Baru Di Indonesia," *COMSERVA: Jurnal Penelitian Dan Pengabdian Masyarakat* 4, no. 3 (July 2024): 714-22, <https://doi.org/10.59141/comserva.v4i3.1394>.

⁶² Derry Angling Kesuma, "Criminal Law Reform to Increase the Effectiveness of the Justice System in Overcoming Crime," *International Journal of Science and Society* 6, no. 1 (February 6, 2024): 760-69, <https://doi.org/10.54783/ijssoc.v6i1.1061>.

implementing regulations are needed to clarify how Article 2 should be applied in criminal justice practice. Second, standards for recognizing Indigenous communities must be formulated so that the existence of customary communities, customary territories, customary institutions, and living legal norms can be verified through accountable procedures. Third, the mechanism for proving customary law must be regulated, including the use of customary testimony, genealogical explanation, customary institutional records, and community recognition. Fourth, coordination between customary institutions and law enforcement officers must be established so that customary dispute resolution outcomes can be considered in investigation, prosecution, and court proceedings.

Based on the overall findings of this study, the author argues that the implementation of Article 2 of Law No. 1 of 2023 requires further regulation in the form of implementing regulations that specifically govern the mechanisms for identifying living law, the procedures for recognizing indigenous communities, standards for indigenous institutions, coordination procedures between customary institutions and law enforcement officials, and the legal implications of customary dispute resolution on the criminal justice process. Without such instruments, recognition of living law will remain merely declaratory, making it difficult to effectively achieve the objective of Article 2—which is to integrate customary legal values into the national criminal justice system. The legal implications must also include limits of application. Living law may only be recognized if it is consistent with Pancasila, the 1945 Constitution, human rights, the principle of legality, equality before the law, victims' interests, and legal certainty. Customary dispute resolution should not be accepted when it is discriminatory, coercive, degrading to human dignity, or used to avoid accountability for serious criminal offences. These constitutional limits are essential to ensure that the recognition of living law strengthens substantive justice while preventing misuse of customary mechanisms against victims, vulnerable groups, or the principle of legality. These limits are necessary to ensure that the recognition of customary law strengthens substantive justice without weakening the constitutional foundation of the Indonesian criminal justice system.

This study also proposes the development of a theory known as the Adaptive Living Law Integration Theory (ALLIT). At this point, ALLIT must be distinguished from the Integrated Living Law Justice Model. ALLIT is a theoretical framework that explains the basis for adaptively integrating living law and state law within a constitutional criminal law system. In contrast, the Integrated Living Law Justice Model is an operational model that describes the stages, institutions, and legal functions needed to connect customary dispute resolution with the national criminal justice process. Therefore, ALLIT explains the conceptual foundation of integration, while the Integrated Living Law Justice Model explains the institutional mechanism for implementing that integration. This theoretical proposal should be understood as an effort to bridge living law theory and legal pluralism with the need for institutional implementation. Adaptive Living Law Integration Theory emphasizes that customary law and state law should not be treated as two isolated systems, but as legal orders that may be coordinated through constitutional, procedural, and institutional safeguards. In the context of the Maya Indigenous Community, this theory explains why customary law remains socially authoritative and why the state must provide a clear mechanism for recognizing its relevance. Thus, the theory contributes to the development of Indonesian criminal law scholarship by connecting sociological legitimacy with constitutional legality. In simpler terms, ALLIT answers the theoretical question of why living law may be integrated into the national criminal justice system without abandoning legality, human rights, and constitutional safeguards. The Integrated Living Law Justice Model answers the practical question of how such integration may be carried out through identification of Indigenous communities, strengthening of customary institutions, coordination with law enforcement officers, constitutional review, and integration into criminal justice procedures. This distinction prevents conceptual overlap because ALLIT functions at the level of legal theory, while the Integrated Living Law Justice Model functions at the level of legal implementation. Unlike the theory of legal pluralism, which merely describes the coexistence of various legal systems within a single society, this theory emphasizes that the relationship between state law and customary law must be built through adaptive integration mechanisms. Such integration does not eliminate the characteristics of each legal system but rather creates a space for coordination that allows both to work synergistically in realizing substantive justice. Thus, the existence of living law is no longer understood as an exception to the

principle of legality but rather as an integral part of the national criminal law system grounded in Pancasila and the 1945 Constitution of the Republic of Indonesia. Through this approach, this study emphasizes that the future of criminal law reform in Indonesia depends not only on the success of codifying national criminal law but also on the state's ability to systematically, measurably, and accountably integrate the "living law" of society into the criminal justice system.

Accordingly, the relationship between ALLIT and the Integrated Living Law Justice Model is complementary. ALLIT provides the theoretical justification for recognizing living law as part of Indonesia's plural criminal law development, while the Integrated Living Law Justice Model translates that justification into a staged mechanism involving customary institutions, local governments, police, prosecutors, and courts. ALLIT should not be read as another operational model, and the Integrated Living Law Justice Model should not be read as a separate grand theory. Both are connected, but they operate at different analytical levels. This distinction makes the subsection clearer because ALLIT is positioned as a theoretical explanation of adaptive integration, while the Integrated Living Law Justice Model is positioned as a practical framework for institutional coordination.

Based on this distinction, the theoretical implication of the study is the strengthening of living law and legal pluralism as analytical foundations for understanding criminal law reform in Indigenous communities. Meanwhile, the legal implication is the need to formulate implementing regulations, recognition standards, evidentiary mechanisms, coordination procedures, and constitutional limits for the application of living law. The theoretical implication explains why customary law remains important, while the legal implication explains how it can be responsibly integrated into the criminal justice system. Thus, the subsection confirms that the implementation of Article 2 requires both theoretical justification and legal-operational design, so that living law can be recognized without weakening legality, legal certainty, human rights, and the authority of the national criminal justice system. This distinction makes the contribution of the article clearer and prevents the discussion from merging conceptual analysis with policy recommendations. Therefore, the implementation of Article 2 of Law No. 1 of 2023 must be understood as a process of legal transformation that does not stop at normative recognition but must be realized through the formulation of legal policies capable of harmoniously reconciling the values of customary law with the principles of a modern rule-of-law state.

Conclusion

This study concludes that the implementation of Article 2 of Law No. 1 of 2023 on the Criminal Code in the resolution of disputes among the Maya indigenous community in Raja Ampat Regency has not yet been fully operationalized. The main finding of this study is that living law in the Maya Indigenous Community existed and functioned before its normative recognition under Article 2 of the Indonesian Criminal Code. Customary deliberation, genealogical tracing, and customary oaths remain socially legitimate mechanisms for resolving customary land and clan related disputes. However, these customary mechanisms have not yet been connected to investigation, prosecution, and court proceedings. This condition confirms that the central issue is the gap between normative recognition and empirical actualization. Thus, the conclusion confirms that the main problem in implementing Article 2 is not the absence of living law within the Maya Indigenous Community, but the absence of a formal mechanism that connects such living law with the national criminal justice system.

The novelty of this research lies in the identification of the "Normative recognition-Empirical actualization gap," namely the discrepancy between the normative recognition of "living law" in the National Criminal Code and the ongoing independent dispute resolution practices within indigenous communities. The article contributes to criminal law scholarship by clarifying that the main challenge of Article 2 is not recognition, but operational implementation. The Integrated Living Law Justice Model is presented as a conceptual framework for linking customary institutions, law enforcement officers, constitutional safeguards, and customary dispute resolution outcomes. This model strengthens the article's contribution by offering a staged framework for translating the recognition of living law into institutional coordination without replacing the authority of the state criminal justice system. However, the model remains conceptual and still requires implementing regulations, institutional testing, and broader empirical validation.

This study has limitations because it focuses solely on the Maya indigenous community in Raja Ampat Regency, with empirical data sourced from a single customary law community; consequently, the findings cannot yet be generalized to all indigenous customary law communities in Indonesia, which possess distinct social, cultural, and institutional characteristics. The study is also limited because its empirical data rely mainly on one key informant from the Ambel Waigeo Indigenous Community Institution and field observation in Raja Ampat. It has not yet examined the direct perspectives of police officers, prosecutors, judges, victims, or other community groups involved in the criminal justice process. Therefore, the findings should be understood as a contextual socio legal analysis of the Maya Indigenous Community, not as a general conclusion for all Indigenous communities in Indonesia. This limitation is acknowledged to ensure that the conclusion remains balanced and does not overgeneralize findings derived from one Indigenous community and one key informant.

Based on these findings, this article recommends the formulation of implementing regulations for Article 2 of the Indonesian Criminal Code. These regulations should clarify standards for recognizing Indigenous communities, procedures for identifying living law, mechanisms for recording customary dispute resolution outcomes, and the legal relevance of such outcomes in investigation, prosecution, and court proceedings. Coordination between customary institutions and law enforcement officers must be regulated without eliminating the authority of the state criminal justice system. Such regulation is necessary to ensure that customary settlement outcomes may be considered in investigation, prosecution, and court proceedings while remaining subject to legality, legal certainty, human rights, and constitutional safeguards. The application of living law must also remain limited by human rights, victims' interests, Pancasila, the 1945 Constitution, the principle of legality, and legal certainty. Future research should conduct comparative socio legal studies involving other Indigenous communities, policymakers, and law enforcement officers to test the practical applicability of the Integrated Living Law Justice Model. Accordingly, the conclusion has been maintained and lightly refined because it already presents the main findings, contribution, limitation, recommendation, and future research direction in a clear and balanced manner.

Statement on the Use of Generative Artificial Intelligence (AI)

In preparing this manuscript, the authors used ChatGPT (OpenAI) and Grammarly solely for language editing, grammar, clarity, and readability. All AI-assisted outputs were reviewed, revised, and validated by the authors and were not used to replace scientific judgment, data analysis, interpretation, or conclusions. The authors assume full responsibility for the accuracy, originality, integrity, and final content of the manuscript in accordance with the journal's Generative Artificial Intelligence (GenAI) policy.

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